NOTES OF CASES.

Beneficial Associations—Liability for Injuries Received in Initiating Members.—The decision of the Supreme Court of Alabama in Loyal Order of Moose *v.* Kenny, 73 So. 518, from which an appeal has been refused by the Supreme Court of the United States, has attracted much attention in the law journals, largely because of the fact that there is little or nothing in the way of precedent on the question involved. The defendant and appellant is a well known fraternal society, having subordinate lodges in most of the states. The plaintiff's decedent applied to one of these lodges for membership, was accepted and was killed through the ignorant misuse by the lodge of electrical apparatus in doing one of the "stunts" which form a part of the initiation proceedings. It seems that this particular stunt was an invention of the particular lodge, and not a part of the rites prescribed by the order, though an officer appointed by it to inspect the manner in which ritual work was carried on had approved of the electrical stunts. This is, of course, of no real importance, since it is impossible to suppose that he approved of the use of a current strong enough to kill the applicant. If the order left the lodges free to institute these stunts, subject only to its subsequent approval, it could not be held liable on the theory of an express agency, after the stunt had been approved, any more than before it was approved, unless there was something inherently dangerous in the proceedings authorized.

Is a fraternal society liable for the negligence of a subordinate lodge in the conduct of its initiation proceedings where the proceedings, if properly conducted, import no danger to the candidate? One journal takes the view, apparently, that by applying for membership and by submitting to initiation proceedings (of the nature of which he is supposed to have no knowledge), the applicant waives any right to recourse for injuries he may suffer as a consequence of the proceedings. This contention is to us rather incomprehensible. A man, by taking passage on a railroad train, does not waive his right to damages for injuries he may suffer in the course of his journey through the negligence of the carrier, although he knows perfectly well that there is a risk of such injuries being suffered on any passenger train.

Nor does there seem to be any greater force in the argument that the order is not liable because it is not specifically authorized by its charter to hold initiations with more or less horse play in them. The grant of charter powers carries with it the right to do anything necessary to the exercise of those powers. Thus a charter authorizing the incorporators to operate a retail grocery store carries with it the right to rent, heat and light a store, to engage clerks, teamsters, etc., to buy and sell goods for cash or credit, and so on.

Moreover, in the instant case, the charter authorized the order to organize subordinate lodges "having ritualistic ceremonies," which would seem to specifically cover the use of such ceremonies in the initiation of the applicant.

Another objection made to the decision is as follows:

"There seems, however, even a stronger reason than this for non-liability of the order. The applicant either invites rough treatment in the pursuit of his own ends or he does not. If he does, the fact that this tends to the advantage of the order can make no difference. His request stands as the sole reason for his being put in the situation he occupies. He assumes the risk of the rough treatment he receives—in other words, he is guilty of contributory negligence. He may be like one who invites a fight and sues for injuries received therein.

"But suppose that under misrepresentation he incurs a greater risk than he was led to believe he would be subjected to. Then the inquiry would be, who misled him and was what he is subjected to reasonably to be apprehended from what the order prescribes in initiation?"

This would seem to go rather to the question of the liability of the subordinate lodge and its members than to that of the order. But the conclusive reason against its cogency is that one can not be guilty of contributory negligence because he consents to go through an initiation without any knowledge of the nature of the proceedings; and even if he had full knowledge of the nature of the proceedings, and assumed the risk of being injured by them, it can not be said that he assumed the risk of those in charge of them, through negligence, using a deadly electric current, instead of the harmless one contemplated by the designers of the "stunt." The analogy of the passenger and carrier is again applicable.

The question remains, is the relation between the main body and its subordinate lodges such that, in initiating an applicant for membership, the subordinate lodge is the agent of the order to the extent of conducting the ceremonies which are made by it indispensable to membership? We are inclined to think that the Alabama court correctly decided this question in favor of the plaintiff. It has been decided over and over again that the subordinate lodge is the agent of the grand lodge in the collection of dues and in the management of all the relations of the members with the grand lodge, and the collection of dues is as much a part of the business of the grand lodge, and no more so, than the initiation proceedings which it makes an indispensable condition of admission to the order.

Master and Servant—Liability to Third Person—Scope of Employment—Automobile Accident.—In Elliott *v.* O'Rourke, in the Supreme Court of Rhode Island (March, 1917, 100 Atl., 314), it was